URBAN UPRISING

Nowadays, the catchword in Emeryville, California, is "bright" instead of "blight." This corridor of land, contaminated with hydrocarbons, heavy metals, and chlorinated solvents, is being cleaned up for transformation into retail, hotel, and office complexes, creating 10,600 new jobs. In addition to a $200,000 grant from the EPA, the town leveraged $644 million in private investments, and hungry developers have come calling.

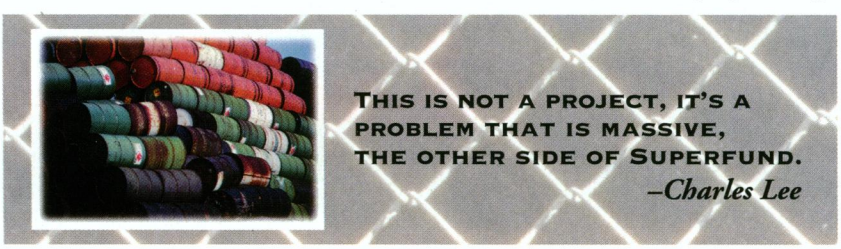
On the other side of the country, the city of Bridgeport, Connecticut, worked with Westinghouse Corporation to redevelop an abandoned plant. An industrial park is in the works, which will provide 400 new jobs. That success spurred Bridgeport to identify 28 other local sites to be detoxified and rejuvenated. So far, 120 acres have been cleaned up with the help of $15 million in private funding and $133 million in public investments.

These successes at urban renewal represent a new recognition by the federal government of the flaws in the ponderous and fiscally punitive practices that had long been championed in the name of environmental cleanup. Those practices started with the 1976 passage of the Resource Conservation and Regulation Act, which regulated waste management, and became entrenched with the 1980 Comprehensive Environmental Response, Compensation, and Liability Act and its Superfund program.

Inspired by the Love Canal disaster of the late 1970s, in which buried toxic waste began resurfacing in creeks, sewers, basements, and even the school playground of the unsuspecting New York community, Superfund requires cleanup of toxic sites to the level that a child could eat the soil without adverse health effects. Liability to the landowner is open-ended, consisting of payment for cleanup of all past contamination. Despite the EPA's good intentions, one early, notable result of Superfund was recalcitrant landowners who abandoned their contaminated lands. These sites were left untouched by banks and developers, who were reluctant to take on such risky properties. By 1995, more than 38,000 such sites with proven or suspected contamination had been reported to the EPA as potential Superfund sites. The EPA's National Priorities List of the worst sites approached 1,300 sites, compared to only 300 sites that had been cleaned up.

Since the inception of the Brownfields National Partnership Action Agenda in Fiscal Year 1995, the EPA has provided funding of as much as $200,000 to 113 states, cities, towns, counties, tribes, and regional areas to create pilot programs for the renewal of "brownfields," defined by the EPA as abandoned, idle, or underused industrial and commercial facilities where expansion or redevelopment is confounded by real or perceived environmental contamination. In its broadest definition, the term "brownfields" can apply to anything from spillage at a corner dry-cleaning shop to a massive hazardous waste dump. The General Accounting Office has estimated that there are up to 450,000 of these brownfields around the country.

One tenet of the action agenda is that there can be variable cleanup standards depending on how the land is being used. The standards for a factory are different from those for a warehouse, which are different from those for a daycare facility. The hallmark of the brownfields initiative is that, through administrative improvements, existing regulatory laws provide an affirmative atmosphere in which states and communities have a chance to revitalize their brownfields, many of which are located in poor inner cities. The Clinton administration wants to provide tax incentives and a federal partnership to support local efforts at brownfields rejuvenation. Reclaiming brownfields confers multiple benefits. Cleanup of a site provides space for new businesses to build, providing jobs, revitalizing the local economy, and protecting nearby "greenfields" (previously untouched properties) against industrial encroachment.



While a program like Superfund may be a boon for massive hazardous waste sites, says Marjorie Buckholtz, the EPA's National Brownfields Program coordinator, "[Such] methods weren't working on lesser contam-

inated properties. Nothing like [the brownfields program] has been tried before and there was no model to follow." She also says the EPA didn't want to make the mistake of creating legislation or policy that was well-intentioned but that had unexpected effects—as with the Superfund landowners who abandoned their contaminated properties rather than try to meet onerous federal cleanup standards.

In order to facilitate this holistic approach to repairing the damage to the urban landscape, Vice President Gore announced in May 1997 that he was incorporating the resources of more than 15 federal agencies into the Brownfields National Partnership Action Agenda. Thanks to this project, the brownfields initiative now includes a $300 million federal investment with the aim of raising $5–28 billion in private investments to support up to 196,000 jobs.

The federal monies are designated to provide redevelopment and housing funds ($155 million) from the Department of Housing and Urban Development (HUD); assessment, cleanup, and job training funds ($125 million) from the EPA; redevelopment of affected areas ($17 million) from the Economic Development Administration; and additional job training support from the departments of Health and Human Services (DHHS), Labor, and Education, among other programs. The NIEHS focus in the partnership is to increase communication and collaboration among brownfields pilot programs, and provide 7 minority and 20 EPA worker-trainee grants, as well as a number of Environmental Justice Partnership grants.

"We think it's unique," says Buckholtz of the initiative. "Anything goes, from technical training by the EPA, to neighborhood improvement by HUD, from DHHS tackling welfare . . . to [the General Services Administration] revitalizing federal properties. We want to serve the local community and get everyone working together."

In the words of Charles Powers, a faculty member of Newark's University of Medicine and Dentistry in New Jersey who is funded by the EPA to monitor the brownfields initiative, the initiative is a national experiment in the management of hazardous substances that may well be building a model of future environmental law. "This has been very exciting to a number of people," says Powers. "I've never seen anything as well-intentioned as this has been in [terms of] both the people who have become involved and their efforts. And I don't see any future deterioration of that work."

Brownfields cleanup enjoys bipartisan support, as well as endorsement by environmental groups, according to Charles Bartsch of the Northeast-Midwest Institute in Washington, D.C., which works with congressional groups from those regions. Bartsch has been studying the brownfields movement from its grassroots inception and believes "there is a nice dovetailing of goals among a number of different players."

Still, the program is in its infancy. Monies for the partnership agenda come from existing and proposed sources. Not yet approved, but included in the balanced budget agreement, is a $2 billion tax incentive to encourage redevelopment of about 5,000 brownfields sites at a cost of $10 billion in private sector resources, which will also help pay for the removal of pollutants from some 30,000 urban and rural sites. Additionally, a spate of brownfields legislation has just been introduced into the 105th Congress. Many of the advances made into brownfields rejuvenation have come through what Bartsch calls "very creative reinterpretation" of the existing Superfund law, but now congressional action is needed to make these reforms permanent.

No one expects quick and easy passage of the measures, since they are tied up under the controversial bid to reauthorize Superfund legislation. Most of the 13 measures are designed to offer solutions to stumbling blocks that have arisen during

Source: EPA Office of Solid Waste and Emergency Response Brownfields Home Page at http://earth1.epa.gov/swerosps/bf/
*Awarded as of 1 August 1997.

MANY LANDOWNERS AND RESPONSIBLE PARTIES REALLY SEE BROWNFIELDS AS A WAY OF AVOIDING STRINGENT SUPERFUND STANDARDS, A WAY TO PLAN INDUSTRIAL USE SO AS NOT TO HAVE TO CLEAN IT UP.
–John Pendergast

implementation of the brownfields initiative, such as questions about institutional controls, liability, and the use of additional federal monies for the pilot projects. In the opinion of some who have studied the program and to others who have tried to implement it, the program's ultimate success will rest on whether these issues are successfully addressed.

Cautionary Notes

There is universal agreement that the brownfields initiative constitutes an exciting new approach to tackling industrial wastelands and inner city decay. But some experts worry that progress may come at the expense of the same lower-income residents that have already been affected by the original blight. They say there is no strong oversight to ensure that brownfields are cleaned to common standards; instead, states hosting EPA pilot programs as well as other states that started their own programs have passed a hodgepodge of laws that address those responsibilities differently.

"This is not a project, it's a problem that is massive, the other side of Superfund," says Charles Lee, Director of Environmental Justice for New York City's United Church of Christ Commission for Racial Justice. "It's an agenda that the nation has never gotten to and which public health agencies have yet to even think about."

"Many landowners and responsible parties really see brownfields as a way of avoiding stringent Superfund standards, a way to plan industrial use so as not to have to clean it up," says John Pendergast of the Washington, D.C.-based Environmental Law Institute. "But that is short-sighted. It doesn't solve the problem or serve the public interest."

Vice President Gore announced that as part of the new alliance, DHHS will work across the administration to develop a public health strategy to protect community residents near brownfields, the Department of the Treasury will work with Congress on the tax incentive proposal, and the EPA, the Department of Justice, and individual states will collaborate to establish national guidelines for states' voluntary cleanups.

In response to criticism of the project, Buckholtz says there may very well be flaws in the initiative because it has been "designed to learn from. The pilots are living laboratories. We are trying to have the flexibility to improve and change things as we go."

Powers, who was working with the EPA on the brownfields issue before the initiative was born, says, "We were, and still are, discussing two cultures—the regulatory and the community—and how to tie them together. Never before have we said that the way to learn is to figure out how and what makes it work. But the performance by pilots is unequal and among the [pertinent] issues [is the question] 'how clean is clean?' in relation to what the community wants and needs. We don't know what to do with public involvement in waste removal."

Environmental Justice

Brownfields revitalization poses the possibility that, once the sites are cleaned up and new industries open their doors, the

National Pilots

Baltimore, MD
Birmingham, AL
Bridgeport, CT
Bucks County, PA
Burlington, VT
Cape Charles–Northampton County, VA
Charlotte, NC
Chicopee, MA
Chippewa County/Kinross Township, MI
Cleveland, OH
Cook County, IL
Cowpens, SC
Dade County, FL
Detroit, MI
Elmira, NY
Emeryville, CA
Fayetteville, NC
Greenfield, MA
Hartford, CT
High Point, NC
Houston, TX
Indianapolis, IN
Jacksonville, FL
Jersey City, NJ
Kansas City, KS and MO
Ketchikan Gateway Borough, AK
Knoxville, TN
Laredo, TX
Lawrence, MA
Lima, OH
Louisville, KY
Lowell, MA
State of Maine
Memphis, TN
Navaho Nation, AZ
New Bedford, MA
New Orleans, LA
New York, NY
Newark, NJ
Niagara Falls, NY
Northwest Regional Planning Commission, WI
Oregon Mill Sites
Perth Amboy, NJ
Phoenixville, PA
Portland, OR
Puerto Rico Industrial Development Company
State of Rhode Island
Richmond, CA
Richmond, VA
Rochester, NY
Rome, NY
Sacramento, CA
St. Louis, MO
St. Paul Port Authority, MN
Santa Barbara County, CA
Stockton, CA
Tacoma, WA
Tallahassee, FL
Trenton, NJ
Tucson, AZ
Wellston, MO
West Central Municipal Conference, IL
Wilmington, DE
Worcester, MA

Regional Pilots

Atlanta, GA
Baltimore County, MD
Bellingham, WA
Bonne Terre, MO
Boston, MA
Buffalo, NY
Camden, NJ
Chicago, IL
Cincinnati, OH
Clearwater, FL
Concord, NH
Dallas, TX
Downriver Community Conference, MI
Duwamish Coalition, WA
East Palo Alto, CA
East St. Louis, IL
Elizabeth, NJ
Englewood, CO
Gainesville, FL
Glen Cove, NY
State of Illinois
Northwest Indiana Cities
State of Indiana
Kalamazoo, MI
Lynn, MA
Miami, FL
Milwaukee County, WI
State of Minnesota
Murray City, UT
Naugatuck Valley, CT
New Haven, CT
Oakland, CA
Ogden City, UT
Panhandle Health District, ID
Philadelphia, PA
Pittsburgh, PA
Portland, ME
Prichard, AL
Provo, UT
Puyallup Tribe of Tacoma, WA
St. Petersburg, FL
Salt Lake City, UT
San Francisco, CA
Sand Creek Corridor, CO
Shreveport, LA
Sioux Falls, SD
Somerville, MA
Tulsa, OK
West Jordan, UT
Westfield, MA
Wisconsin Department of Natural Resources

areas will become polluted all over again. "Standards are being relaxed, and I don't want communities of color being subjected to risks that others aren't," says Robert Bullard, who served on the EPA's National Environmental Justice Advisory Council. He points out that 27,000 sites were removed from consideration for Superfund status after an initial examination, and were redesignated brownfields.

"I think the EPA itself is aware of the health issues, but I don't think that others may be as concerned. In addition, communities with multiple brownfields represent new public health challenges that require new approaches," Lee says. He pushed to have DHHS included as one of the partners in the brownfields initiative. The role of public health officials includes not only ensuring that cleanups are being performed to adequately protect public health, but also, Lee says, to "open a dialogue on what constitutes healthy and sustainable communities, which includes the importance of livable careers, job training, transportation, and other factors that revitalize a community. There remains a lot of controversy over the proper level of cleanup and other health and safety protections."

Buckholtz says the EPA "could not be any more involved in these issues, which we take very seriously." At least one full year was spent researching environmental justice issues, which included visits to five inner cities, as well as continuing attendance at numerous town meetings. "As a result of talking with communities, we changed criteria of pilot projects to make sure there will be community involvement and partnership, and we call these communities to make sure that is being done," says Buckholtz. In fact, several pilot applicants were not selected because of inadequate community involvement.

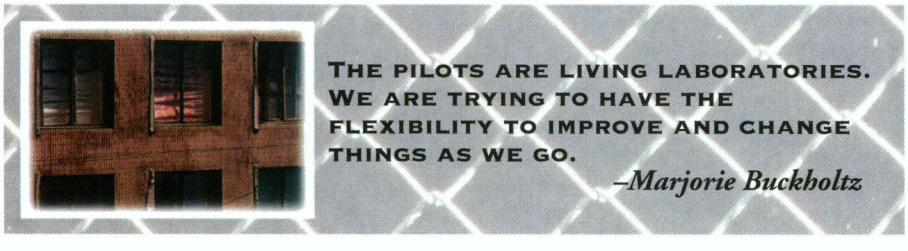
Pendergast agrees that "some people are worried that the poor and minority communities are about to be [revictimized], because cleanup may be less stringent and could potentially bring in more pollution." But, he says, "Others say that those areas are already blighted and undesirable, so anything done to help will be an improvement." Pendergast says he is looking at an issue that few others are—that of institutional controls, such as deed restrictions, to ensure that new uses of brownfields are appropriate and stay that way in the future.

"Most states now have a brownfields program, but they are not formally coordinated and there is no overall mechanism to guide them," Pendergast says. "And with 450,000 brownfields, I would expect hundreds if not thousands of these sites might be misused." Institutional controls can prevent landowners from changing the site's use to one that might, in the future, expose people to contamination left in place, Pendergast says. And such controls can ensure that any change in use would be preceded by a risk assessment and possibly new cleanup measures.

Oversight and Liability

The EPA is also struggling with the issue of whether it should exercise oversight on brownfields cleanups, or let states formally assume that responsibility. What exists now is a "memo of understanding" with certain states that, once they make a decision on the adequacy of a cleanup effort, the EPA "will not come back in," Powers says.

But states handle the issues of liability and protection differently. Minnesota's law says that the state needs to provide assurance that brownfields meet cleanup standards and, in order to pay for state oversight, brownfields developers are charged a fee. Massachusetts, on the other hand, has a tiered system where the dirtiest sites are put in the hands of the state attorney general, but cleaner brownfields need only pass inspection by licensed professionals. Ohio's law permits licensed consultants to review cleanups, but it also holds them liable for cleanup costs.



Buckholtz says that discussions are underway between the states, the EPA, and the Department of Justice on defining criteria and standards for cleanups. And Powers believes that within several years there will be national agreement on standards that need to be set.

In order to do this, some thorny public health issues must be resolved. For example, says Lee, "Many are not convinced that [use of] institutional controls is even an appropriate mechanism." And, says Virginia Aveni, an environmental planner with the Cuyahoga County [Ohio] Planning Commission who helped spearhead the brownfields movement, Ohio's new law doesn't ensure complete oversight. "There needs to be stronger oversight and a heavier reliance on audits, and changes need to be health-based," she says.

Related is the issue of who is ultimately responsible for the adequacy of the cleanup—the owners, the banks who hold the liens, the states, or the federal government. Under Superfund legislation, property owners and banks are held liable in perpetuity, responsible for contamination found now or in the future.

To address the liability roadblock, many states have passed laws establishing voluntary cleanup programs and reforming liability. For instance, "prospective purchaser agreements" allow states to issue a release from potential future liability to prospective purchasers who remediate brownfields under government supervision. These measures have worked in some cases, but developers still remain hesitant. They are either unaware of state reforms or don't trust the EPA, says Joseph Dufficy, brownfields coordinator for EPA Region Five, based in Chicago. "It will take a long time to convince industry that we have changed," says Dufficy, citing what some see as a discrepancy between the EPA's newly announced get-tough standards for air quality and the more relaxed, helping-hand attitude of the brownfields initiative. "We, as regulators, are trying to use this new sense of relaxation to not be viewed as a big nasty enforcement agency. We now want to approach industry as partners to solve problems."

It's working, according to Carey Rosemarin, the Illinois attorney who drafted that state's first prospective purchaser agreement. There is now a "burgeoning business in buying contaminated properties," says Rosemarin, a partner in the Chicago environmental law firm Jenner & Block. "These companies believe they can get such properties and clean them up for favorable rates."

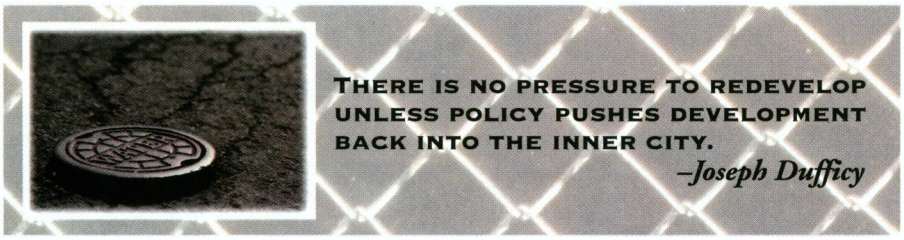
Variable Return on Investment

Success in revitalizing brownfields will probably depend on the area of the country and specific city dynamics, says Dufficy. It may work best on the West Coast, where greenfields land is too expensive and brownfields become attractive options. The East, with its aging industrial base, also has more incentive to redevelop their cities than does the Midwest, where, Dufficy says, "[D]evelopers need only look [to] nearby cornfields. There is no pressure to redevelop unless policy pushes development back into the inner city."

But a good dose of money helps this process, and much can be accomplished outside of the federal brownfields program. Chicago is a "perfect example of what this legislation can accomplish on a national level," according to Senator Carol Moseley-Braun (D-Illinois), who introduced the brownfields tax benefit legislation. "Environmental protection can be and is good business," she says.

Chicago began its own brownfields program in 1993, just as the EPA began its efforts. With more than 2,000 brownfields sites, the city poured in $12 million, so far cleaning up five sites, retaining 300 jobs in the city, and creating 200 more. In one of Chicago's pilot programs, sausage maker Scott Peterson Meats moved onto a previously contaminated property after the city invested $25,000 to clean up the site. The company has since built a new $5.2 million smokehouse and hired an additional 100 workers.

Realizing they needed federal help to redevelop another 120 acres, Chicago applied for a $50 million loan through HUD. "There is a sense of mission here, environmental cleanup with a direct human impact," says James Van der Kloot, an environmental scientist with the EPA who worked with the city for three years on brownfields cleanup. "It really mattered to the group that jobs should be created in depleted areas."



On the other hand, Cleveland's brownfields pilot, the first in the country and a model of community action, suffered because industry had long ago migrated out of the city, taking 160,000 manufacturing jobs with it. "We started this in 1992 because [Cuyahoga County] was trying to stem the outmigration of growth to neighboring areas," says Aveni. "We brought together all the interested parties, including federal and state regulatory representatives, politicians, bankers, utility and environmental interests, and members of the community. I was amazed at the interest."

But five years later, Aveni says, the only real success the city can point to is a project to clean up severe groundwater contamination on the site of a steel office furniture manufacturer. The jury is still out on whether there will be substantial brownfields redevelopment in Cleveland, she says. "There are 14,000 real or perceived sites in Cuyahoga County, including 3,000 in Cleveland, that need to be assessed for cleanup, and no incentive for developers not to go to greenfields instead. To go back to the neighborhood and revitalize them will take a lot more public money than we have."

Buckholtz, for one, believes in the ingenuity of states, counties, and cities, backed by Congress, to overcome many obstacles to cleaning up brownfields. "We are not out to create another federal institution," she says. "Not only do we want to do no harm, we want to leave those communities better than we found them."

Renée Twombly